

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

Blue Spike, LLC,

Plaintiff,

V.

Texas Instruments, Inc., et al.,

Defendants.

Case No. 6:12-cv-499 MHS

Lead Case

Jury Trial Demanded

Blue Spike, LLC,

Plaintiff,

V.

Kronos Incorporated.

Defendant.

Case No. 6:13-cv-86 MHS

Consolidated Case

Jury Trial Demanded

Declaration of Scott Moskowitz in Support of Blue Spike's Opposition to Kronos's Motion to Transfer [Dkt. 610]

I, Scott Moskowitz, declare as follows:

1. I am the Chief Executive Officer of Blue Spike LLC (“Blue Spike”), a Texas limited liability company.

2. I am one of the inventors of all four patents-in-suit.

3. I am domiciled at 433 S. Chilton Avenue, Unit 3, Tyler, Texas 75702. I also own a condominium in Florida, where I live part time in order to receive medical treatments that I cannot receive elsewhere. These medical treatments are an alternative to the use of addictive opiates for pain management.

4. Blue Spike has its headquarters and principal place of business at 1820 Shiloh Road, Suite 1201C, Tyler, Texas 75703. Tyler, Texas has been Blue Spike's headquarters, principal place of business, and place of operations since May 2012.

5. Blue Spike's employees, computer servers, and sources of proof are located in Tyler, Texas.

6. Blue Spike plans to call witnesses from Texas, including me and witnesses pertaining to the accused products in this lawsuit.

7. Blue Spike LLC has no offices, no employees, no customers, and no other meaningful contacts in the District of Massachusetts—and never has.

8. Brett Fasullo has never done any work for Blue Spike. Prior to the filing of this lawsuit and Case No. 12-499, Blue Spike Inc. (as opposed to Blue Spike) previously utilized some services of Brett Faullo, but they were very limited and not related to the technology at issue with the patents-in-suit.

9. Blue Spike LLC has never had an office in Boston. Blue Spike Inc.'s old website listed a location in Boston, but that was only Brett Fasullo's residence where he telecommuted from for occasional Blue Spike Inc. (not Blue Spike LLC) projects. It appears he no longer even lives in Boston.

10. At the time of the filing of the this lawsuit and even earlier than the filing of lead Case No. 12-499, Blue Spike, Inc. had no operations, employees, equipment, documents, or other property located in Boston or anywhere else in Massachusetts.

11. Again for clarification, the older Boston office listed at www.bluespike.com was never an office for Plaintiff Blue Spike LLC. The website for Blue Spike, Inc. has since been updated.

12. Further, the Boston office listed at www.bluespike.com was never an office for Plaintiff Blue Spike LLC.

13. Litigating this action in the District of Massachusetts would be very difficult for me due to my medical condition, and my inability to fly long distances due to my pain.

14. A transfer would dramatically increase the costs of litigation for Blue Spike, would increase the amount of time that Blue Spike's witnesses and employees would have to spend litigating the case, and would cause serious hardship for me personally, as I suffer from a medical condition that makes it very painful to travel long distances.

15. Litigating this action in the District of Massachusetts would be extremely inconvenient, expensive, and burdensome for Blue Spike. Furthermore, I am the primary care provider for my dog that is now blind and involved in an experimental FDA trial for his health condition.

16. I have never traveled to Massachusetts for business or to meet with members of Blue Spike's legal team, which has offices in the San Francisco Bar Area and Texas, including 918 N. College Ave., in Tyler, Texas. The only meetings related to this litigation that Blue Spike employees and I have attended have all taken place in Tyler, Texas.

I declare, on May 3, 2013, in Smith County, Texas, and under penalty of perjury under the laws of the United States and Texas, that the statements made in this declaration are true and correct.

/s/ Scott Moskowitz
Scott Moskowitz

ATTESTATION

I, Randall Garteiser, am the ECF user filing this document with the permission of the signer above, Scott Moskowitz. A true and correct copy of this signed document is being maintained at the law firm of Garteiser Honea, P.C.

/s/ Randall Garteiser
Randall Garteiser